

**BEFORE THE MISSOURI REAL ESTATE COMMISSION**

MISSOURI REAL ESTATE COMMISSION	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 08-1130 RE
	)	
UPTOWN DEVELOPMENT INC.	)	
DBA SKLYINE REALTY INC.,	)	
	)	
Respondent.	)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND DISCIPLINARY ORDER**

On or about August 22, 2011, the Administrative Hearing Commission entered its final Decision in the case of *Missouri Real Estate Commission v. Uptown Development Inc. dba Skyline Realty Inc., No. 08-1130 RE*, incorporating the December 11, 2008 Decision. In that Decision, the Administrative Hearing Commission found that Respondent Uptown Development Inc.'s real estate license (license no. 2002008397) is subject to disciplinary action by the Commission pursuant to § 339.100.2 (2), (4), and (16) RSMo.

The Missouri Real Estate Commission ("MREC") has received and reviewed the record of the proceedings before the Administrative Hearing Commission and the Decisions of the Administrative Hearing Commission. The record of the Administrative Hearing Commission is incorporated herein by reference in its entirety.

Pursuant to notice and §§ 621.110 and 339.100.3, RSMo, the MREC held a hearing on April 18, 2012, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri, for the purpose of determining the appropriate disciplinary action against Respondent's license. All of the members of the MREC, with the exception of Jan Hunt and Rosemary Vitale, were present throughout the meeting. Further, each member of the MREC that was present for the hearing has read the Decisions of the Administrative Hearing Commission.

The MREC was represented by Assistant Attorney General Craig Jacobs. Although properly and timely notified, Respondent was not present and was not represented by counsel. After being present and considering all of the evidence presented during the hearing, the MREC issues these following Findings of Facts, Conclusions of Law and Order.

## I.

Based upon the foregoing the MREC hereby states:

### FINDINGS OF FACT

1. The MREC is an agency of the state of Missouri created and established pursuant to § 339.120, RSMo, for the purpose of licensing all persons engaged in the practice as a real estate broker or salesperson in this state. The MREC has control and supervision of the licensed occupations and enforcement of the terms and provisions of Sections 339.010-339.205 and 339.710-339.855, RSMo.

2. The MREC hereby adopts and incorporates by reference the findings of fact of the Decisions and record of the Administrative Hearing Commission in *Missouri Real Estate Commission v. Uptown Development Inc. dba Skyline Realty Inc., Case No. 08-1130 RE*, in its entirety and takes official notice thereof and hereby enters its findings of fact consistent therewith.

3. The MREC set this matter for disciplinary hearing and served notice of the disciplinary hearing upon Respondent in a proper and timely fashion.

4. The MREC licensed Respondent Uptown Development Inc. as a real estate corporation, license number 2002008397. Respondent's license was current at all times relevant to this proceeding.

## II.

### CONCLUSIONS OF LAW

5. The MREC has jurisdiction over this proceeding pursuant to §§ 621.110 and 339.100, RSMo.

6. The MREC expressly adopts and incorporates by reference the conclusions of law and Decision issued by the Administrative Hearing Commission dated August 22, 2011, in *Missouri Real Estate Commission v. Uptown Development Inc. dba Skyline Realty Inc., Case No. 08-1130 RE*, incorporating the December 11, 2008 Decision, takes official notice thereof, and hereby enters its conclusions of law consistent therewith.

7. As a result of the foregoing, and in accordance with the Administrative Hearing Commission's Decision dated August 22, 2011, Respondent's real estate license is subject to disciplinary action by the MREC pursuant to § 339.105.2 (2), (4), and (16).

8. The MREC has determined that this Order is necessary to ensure the protection of the public.

### III.

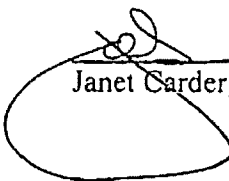
#### ORDER

Having fully considered all the evidence before the MREC, and giving full weight to the Decision of the Administrative Hearing Commission, it is the **ORDER** of the MREC that the real estate license of Uptown Development Inc. dba Skyline Realty Inc. (license no. 2002008397) is hereby **REVOKED**.

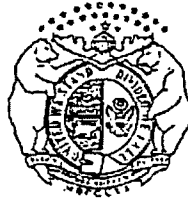
The MREC will maintain this Order as an open, public record of the MREC as provided in Chapters 339, 610, and 324, RSMo (as amended).

SO ORDERED, EFFECTIVE THIS 27 DAY OF April, 2012.

MISSOURI REAL ESTATE COMMISSION

  
Janet Carder, Executive Director

Before the  
Administrative Hearing Commission  
State of Missouri



MISSOURI REAL ESTATE  
COMMISSION,

Petitioner,

vs.

GEGUIEFFA WILLIAMS and UPTOWN  
DEVELOPMENT, INC., d/b/a  
SKYLINE REALTY, INC.,

Respondents.

No. 08-1130 RE

**ORDER GRANTING PARTIAL SUMMARY DETERMINATION**

There is cause to discipline the real estate corporation license of Uptown Development, Inc., d/b/a Skyline Realty, Inc. ("Skyline Realty") for the conduct of its designated broker/officer, Geguieffa Williams, because the conduct involved substantial misrepresentations, false promises, and suppression, concealment and omission of material facts in the conduct of Skyline Realty's business; because the conduct involved representing to a lender and the buyer an amount in excess of the true and actual sale price of the real estate; because the conduct showed that the designated broker/officer was not a person of good moral character; and because the designated broker/officer was incompetent to transact the business of a broker in such a manner as to safeguard the interest of the public.

This order disposes of all the issues in the complaint regarding whether there is cause to discipline Skyline Realty. Accordingly, our hearing will concern only whether there is cause to discipline Williams. After the hearing, we will decide whether there is cause to discipline Williams and will incorporate this order into our final decision.

#### Procedure

On June 10, 2008, the Missouri Real Estate Commission ("the MREC") filed a complaint against Williams and Skyline Realty. We served Williams and Skyline Realty with our notice of complaint/notice of hearing and a copy of the complaint by certified mail.<sup>1</sup> Neither Williams nor Skyline Realty responded. On October 28, 2008, the MREC filed a motion for summary determination ("the motion"). Williams responded on November 12, 2008. Williams prepared his response on his own. Williams may defend himself as a licensee, but may not represent Skyline Realty because Williams is not an attorney. Only an attorney who is allowed to practice in Missouri may file a response for a corporation.<sup>2</sup>

On August 8, 2008, the MREC served its first request for admissions on Williams and Skyline Realty. Neither Williams nor Skyline Realty responded.

The motion requests a favorable decision for the MREC without a hearing. We may find cause to discipline Skyline Realty without a hearing if the MREC establishes facts that entitle it to a favorable decision. The MREC may establish such facts by showing that the licensee did not respond to a request for admissions. Failure of a licensee to respond to a request for

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<sup>1</sup>The certified mail return signature card does not show the date on which Williams signed it. The MREC alleges in its motion, and Williams agrees in his response to the motion, that he was served on August 8, 2008. However, we received the signed certified mail receipt on June 20, 2008. Therefore, we conclude that Williams was served sometime before June 20, 2008.

<sup>2</sup>1 CSR 15-3.250(2); *Reed v. Labor & Indus. Relat. Comm'n*, 789 S.W.2d 19, 23 (Mo. banc 1990). We advised Williams that only an attorney could represent the corporation in the notice of complaint/notice of hearing and in our letter of October 29, 2008, in which we notified Williams and Skyline Realty of the date by which a response to the motion was due.

admissions, even a licensee not represented by counsel, establishes the matters in the request conclusively.<sup>3</sup> The MREC is entitled to rely upon the facts asserted in the request.<sup>4</sup>

As we explained in our order of November 26, 2008 ("November 26 order"), we deemed Williams' response to the motion as a request to withdraw his admissions, but we did not deem his response as a request on behalf of Skyline Realty because only an attorney can represent the corporation. In our November 26 order, we denied summary determination as to Williams, but reserved ruling on the motion as to Skyline Realty. Accordingly, we base our findings of fact regarding Skyline Realty on the first request for admissions that we have deemed admitted by Skyline Realty's failure to respond. Skyline Realty raises no dispute as to the following facts.

#### Findings of Fact

1. The MREC issued a real estate corporation license to Skyline Realty. Skyline Realty's license was at all relevant times current and active. However, Skyline Realty's license was not renewed, so it expired on June 30, 2008.
2. At all relevant times Williams acted in the capacity of broker-officer for Skyline Realty. Williams was licensed in Missouri as a broker-officer, and his licenses were current and active at all relevant times. Williams' licenses expired on June 30, 2008.
3. Gregory Crusoe was employed as an officer of Skyline Realty.
4. At the time of Crusoe's employment with Skyline Realty, Crusoe did not hold a Missouri real estate license.
5. Williams and Skyline Realty served as Crusoe's agent in the purchase of the following properties: 5008 Walrand, Kansas City, Missouri ("5008 Walrand"); 4012 Norton,

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<sup>3</sup>Regulation I CSR 15-3.420(1) and Supreme Court Rule 59.01. *Research Hosp. v. Williams*, 651 S.W.2d 667, 669 (Mo. App., W.D. 1983).

<sup>4</sup>*Killian Constr. Co. v. Tri-City Constr. Co.*, 693 S.W.2d 819, 827 (Mo. App., W.D. 1985).

Kansas City, Missouri ("4012 Norton"); 800 Elmwood, Kansas City, Missouri ("800 Elmwood"); and 3530 East Sixth Street, Kansas City, Missouri ("3530 Sixth Street").

6. Fred McGary served as the listing real estate agent for the subject properties.
7. McGary listed the subject properties with real estate broker John Bills.
8. Williams requested that McGary and Bills amend their listing agreements with respect to each of the subject properties in order to falsely inflate the listing prices.
9. Williams requested that McGary and Bills agree to pay Williams the difference in the proceeds from the sale of each of the subject properties by increasing the commission payment to Williams and Skyline Realty.
10. McGary and Bills amended the listing agreements of each of the subject properties as requested by Williams.

#### 4012 Norton

11. On or about May 21, 2004, the property located at 4012 Norton was originally listed for \$27,500.
12. Williams provided Crusoe with a loan application so that Crusoe could purchase the property located at 4012 Norton.
13. Crusoe agreed to purchase the property after Williams misrepresented to Crusoe that the two would eventually remodel and re-sell the property to make a profit.
14. Williams obtained the loan on behalf of Crusoe through Novastar Mortgage, Inc., 8140 Ward Parkway, Kansas City, Missouri.
15. Williams and/or Williams' agents obtained a false and fraudulent appraisal of the property located at 4012 Norton in order to obtain this loan.
16. On or about November 12, 2004, Crusoe was able to use the loan to purchase the property located at 4012 Norton for the inflated price of \$60,000.

17. The purchase of 4012 Norton was conditioned on a \$40,500 commission payment by the seller to Skyline Realty.

18. Williams never informed Crusoe of the original listing price.

19. Williams never assisted Crusoe in re-selling the property at 4012 Norton.

20. Crusoe was subsequently forced to surrender the property located at 4012 Norton through foreclosure proceedings.

5008 Walrand

21. On or about February 18, 2004, the property located at 5008 Walrand was originally listed for \$29,900.

22. Williams provided Crusoe with a loan application so that Crusoe could purchase the property located at 5008 Walrand.

23. Crusoe agreed to purchase the property after Williams misrepresented that the two would eventually remodel and re-sell the property to make a profit.

24. Williams obtained the loan on behalf of Crusoe through Novastar Mortgage, Inc.

25. Williams and/or Williams' agents obtained a false and fraudulent appraisal of the property located at 5008 Walrand in order to obtain this loan.

26. On or about March 17, 2004, Crusoe was able to use the loan to purchase the property located at 5008 Walrand for the inflated price of \$59,900.

27. The purchase of 5008 Walrand was conditioned on a \$30,093 commission payment by the seller to Skyline Realty.

28. Williams never informed Crusoe of the original listing price.

29. Williams never assisted Crusoe in re-selling the property at 5008 Walrand.

30. Crusoe was subsequently forced to surrender the property located at 5008 Walrand through foreclosure proceedings.



800 Elmwood

31. On or about November 17, 2004, the property located at 800 Elmwood was originally listed for \$27,500.

32. Williams provided Crusoe with a loan application so that Crusoe could purchase the property located at 800 Elmwood.

33. Crusoe agreed to purchase the property after Williams misrepresented that the two could eventually remodel and re-sell the property to make a profit.

34. Williams obtained the loan on behalf of Crusoe through Novastar Mortgage, Inc.

35. Williams and/or Williams' agents obtained a false and fraudulent appraisal of the property located at 800 Elmwood in order to obtain this loan.

36. On or about December 28, 2004, Crusoe was able to use the loan to purchase the property located at 800 Elmwood for the inflated price of \$65,000.

37. The purchase of the property located at 800 Elmwood was conditioned on a \$35,500 commission payment by the seller to Skyline Realty.

38. Williams never informed Crusoe of the original listing price.

39. Williams never assisted Crusoe in re-selling the property at 800 Elmwood.

40. Crusoe was subsequently forced to surrender the property located at 800 Elmwood through foreclosure proceedings.

41. At the time of sale, the actual value of the property located at 800 Elmwood was \$30,000.

3530 East Sixth Street

42. The property located at 3530 East Sixth Street was originally listed for \$49,900.

43. Williams provided Crusoe with a loan application so that Crusoe could purchase the property located at 3530 East Sixth Street.

44. Crusoe agreed to purchase the property after Williams misrepresented that the two would eventually re-sell the property to make a profit.

45. Williams obtained the loan on behalf of Crusoe to enable Crusoe to purchase the property located at 3530 East Sixth Street.

46. Williams and/or Williams' agents obtained a false and fraudulent appraisal of the property located at 3530 East Sixth Street in order to obtain this loan.

47. On or about September 12, 2004, Crusoe was able to use the loan to purchase the property located at 3530 East Sixth Street for the inflated price of \$79,900.

48. The purchase of the property located at 3530 East Sixth Street was conditioned on a \$30,000 commission payment to Skyline Realty.

49. Williams never informed Crusoe of the original listing price.

50. Williams never assisted Crusoe in re-selling the property at 3530 East Sixth Street.

51. Crusoe was subsequently forced to surrender the property located at 3530 East Sixth Street through foreclosure proceedings.

#### Conclusions of Law

We have jurisdiction of the complaint.<sup>5</sup> The MREC has the burden to prove facts for which the law allows discipline.<sup>6</sup>

We consider Skyline Realty to have admitted the facts set forth in the MREC's first request for admissions because Skyline Realty did not respond. All of the facts for which the MREC sought admissions were phrased in terms of what conduct Williams had engaged in. Skyline Realty is deemed to have admitted these facts by its failure to respond.

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<sup>5</sup>Section 621.045, RSMo 2007. Statutory references are to RSMo 2000, unless otherwise noted.

<sup>6</sup>*Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

Generally, because a corporation acts only through its agents, its agent's acts are the corporation's acts. *Fowler v. Park Corp.*, 673 S.W.2d 749, 753-54 (Mo. banc 1984). Section 339.710,<sup>7</sup> RSMo Supp. 2006, specifically applies this principle to designated brokers and real estate corporations:

For purposes of sections 339.010 to 339.180, RSMo, and sections 339.710 to 339.860, the following terms mean:

\* \* \*

(12) "Designated broker", . . . any individual licensed as a broker who is appointed by a partnership, association, limited liability corporation, or a corporation engaged in the real estate brokerage business to be responsible for the acts of the partnership, association, limited liability corporation, or corporation. . . .

Therefore, the conduct, including acts and omissions, that Williams engaged in is also the conduct of Skyline Realty. If Williams' conduct constitutes grounds for discipline under any of those causes, the MREC may discipline Skyline Realty's license.

Williams and Skyline Realty were the agents for the buyer in the sales of the subject properties. Section 339.740 provides:

1. A licensee representing a buyer or tenant as a buyer's or tenant's agent shall be a limited agent with the following duties and obligations:

- (1) To perform the terms of any written agreement made with the client;
- (2) To exercise reasonable skill and care for the client;
- (3) To promote the interests of the client with the utmost good faith, loyalty, and fidelity . . . .

\* \* \*

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<sup>7</sup>RSMo Supp. 2007. The definition of "designated broker" appeared in RSMo 2000 as subdivision (11). An amendment in 2002 changed the numbering to subdivision (12), but did not change the text of the definition. Laws 2002, H.B. 1964, § A (91<sup>st</sup> Gen. Assembly, 2d Reg. Sess'n). Section 339.710 was also amended in 2004 and 2005, but without change to subdivision (12).

(5) To comply with all requirements of sections 339.710 to 339.860, subsection 2 of section 339.100, and any rules and regulations promulgated pursuant to those sections[.]

The MREC contends that § 339.100.2(2), (6), (15), and (18)<sup>8</sup> authorize discipline against Skyline Realty for Williams' conduct. Section 339.100.2(2) and (4) authorize discipline for:

(2) Making substantial misrepresentations or false promises or suppression, concealment or omission of material facts in the conduct of his business or pursuing a flagrant and continued course of misrepresentation through agents, salespersons, advertising or otherwise in any transaction;

\* \* \*

(4) Representing to any lender, guaranteeing agency, or any other interested party, either verbally or through the preparation of false documents, an amount in excess of the true and actual sale price of the real estate or terms differing from those actually agreed upon[.]

A misrepresentation is a falsehood or untruth made with the intent of deceit rather than inadvertent mistake.<sup>9</sup> "Substantial" means "being that specified to a large degree or in the main . . . <a [substantial] lie>."<sup>10</sup>

In regard to each of the subject properties, Skyline Realty engaged in a scheme by which it received artificially high commissions through inflation of the listing price and then obtaining financing through false appraisal reports. Further, Skyline Realty obtained the participation of the buyer, Crusoe, by deliberately concealing and omitting material facts, including the failure to inform him that the price was artificially inflated, and that Skyline Realty was profiting from the inflated price without any benefit to the buyer, and asserting that Skyline Realty would assist

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<sup>8</sup>Subdivisions (15) and (18) were renumbered (16) and (19), respectively, effective August 30, 2004, without substantive changes. Laws 2004, H.B. 985, § A (92<sup>nd</sup> Gen. Assembly, 2<sup>nd</sup> Reg. Sess'n). Skyline Realty's conduct regarding the sale of 3530 East Sixth Street appears to have spanned August 30, 2004, because the sale of the property occurred on September 12, 2004. Skyline Realty's conduct regarding the sale of 800 Elmwood occurred after August 30, 2004.

<sup>9</sup>*Hernandez v. State Bd. of Regis'n for Healing Arts*, 936 S.W.2d 894, 899 n.3 (Mo. App., W.D. 1997).

<sup>10</sup>WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2280 (unabr. 1986).

Crusoe in re-selling the property. This constitutes substantial misrepresentations and false promises, and suppression, concealment or omission of material facts in the conduct of Skyline Realty's business. There is cause for discipline under § 339.100.2(2) for this conduct.

In regard to each of the subject properties, Skyline Realty's representations about the sale price to its buyer and its participation in the provision of false appraisal reports to the lender are cause for discipline under § 339.100.2(4).

The MREC cites § 339.100.2(15), which allows discipline for:

[c]ommitting any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040[.]

Section 339.040 provides the qualifications for licensure:

1. Licenses shall be granted only to persons who present, and corporations, associations, or partnerships whose officers, associates, or partners present, satisfactory proof to the commission that they:

(1) Are persons of good moral character; and

(2) Bear a good reputation for honesty, integrity, and fair dealing; and

(3) Are competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public.

(Emphasis added.)

Good moral character is honesty, fairness, and respect for the law and the rights of others.<sup>11</sup> Williams' course of conduct in regard to each of the subject properties demonstrates a lack of good moral character because it consisted of lies and the betrayal of the loyalty he owed to his client, Crusoe. This shows a lack of good moral character on the part of an officer of

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<sup>11</sup> *Hernandez*, 936 S.W.2d at 899 n.1.

Skyline Realty that would constitute grounds to deny licensure for Skyline Realty. Therefore, there is cause for discipline under § 339.100.2(15).

There is no evidence of what Williams' or Skyline Realty's reputation is. Therefore, there is no showing that their reputations would be grounds to refuse issuance of a license under § 339.040.1(2).

Incompetence is a general lack of professional ability, or a lack of disposition to use an otherwise sufficient professional ability, to perform in an occupation.<sup>12</sup> Williams was an experienced broker. He knew that his schemes were fraudulent, yet he executed them anyway. Therefore, he lacked the disposition to use his professional ability to conduct his brokerage business "in such a manner as to safeguard the interest of the public." Such conduct on the part of one of its officers would disqualify Skyline Realty for licensure under § 339.040.1(3). Accordingly, there is cause for discipline under § 339.100.2(15).

The MREC also cites § 339.100.2(18), which allows discipline for:

[a]ny other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or gross incompetence[:]

The adjective "other" means "not the same : DIFFERENT, any [other] man would have done better[.]"<sup>13</sup> Subdivision (18) refers to conduct different from that referred to in the remaining subdivisions of § 339.100.2. We have found that all the conduct alleged in the complaint against Skyline Realty is cause for discipline under § 339.100.2(2), (4), and (15). There is no "other" conduct before us. Therefore, we find no cause for discipline under § 339.100.2(18).

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<sup>12</sup>*Tendai v. Missouri Bd. of Regis'n for Healing Arts*, 161 S.W.3d 358, 369 (Mo. banc 2005).

<sup>13</sup>WEBSTER'S THIRD INTERNATIONAL DICTIONARY 1598 (unabr. 1986).

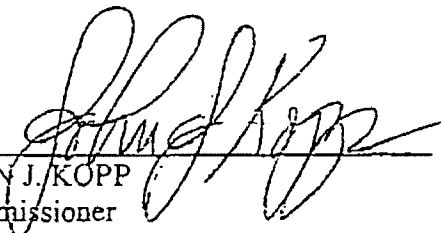
The motion is for summary determination against both Williams and Skyline Realty. We grant the motion as to finding cause to discipline Skyline Realty under § 339.100.2(2), (4), and (15), but have denied the motion as to Williams in our November 26 order.

#### Summary

There is cause to discipline Skyline Realty under § 339.100.2(2), (4), and (15) for the conduct involving the four subject properties.

We will convene the hearing on the complaint against Williams as scheduled on March 13, 2009.

SO ORDERED on December 11, 2008.

  
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JOHN J. KOPP  
Commissioner

Before the  
Administrative Hearing Commission  
State of Missouri



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MISSOURI REAL ESTATE COMMISSION, )  
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Petitioner, )  
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vs. )  
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GEGUIEFFA WILLIAMS and UPTOWN )  
DEVELOPMENT, INC., d/b/a )  
SKYLINE REALTY, INC., )  
 )  
Respondents. )

No. 08-1130 RE

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**DECISION**

Geguieffa Williams is not subject to discipline. Uptown Development, Inc., d/b/a Skyline Realty, Inc. ("Skyline Realty") is subject to discipline under § 339.100.2(2), (4), and (16).<sup>1</sup>

**Procedure**

On June 10, 2008, the Missouri Real Estate Commission ("the MREC") filed a complaint against Williams and Skyline Realty. We served Williams and Skyline Realty with our notice of complaint/notice of hearing and a copy of the complaint by certified mail.<sup>2</sup> Neither Williams nor Skyline Realty responded. On August 8, 2008, the MREC served its first request for admissions on Williams and Skyline Realty. Neither Williams nor Skyline Realty responded.

<sup>1</sup>Statutory references, unless otherwise noted, are to RSMo Supp. 2010.

<sup>2</sup>The certified mail return signature card does not show the date on which Williams signed it. The MREC alleges in its motion, and Williams agrees in his response to the motion, that he was served on August 8, 2008. However, we received the signed certified mail receipt on June 20, 2008. Therefore, we conclude that Williams was served sometime before June 20, 2008.



On October 28, 2008, the MREC filed a motion for summary determination ("the motion"). Williams responded on November 12, 2008. Skyline Realty did not respond through a licensed attorney.

As we explained in our order of November 26, 2008 ("November 26 order"), we deemed Williams' response to the motion as a request to withdraw his admissions, but we did not deem his response as a request on behalf of Skyline Realty because only an attorney can represent the corporation. In our November 26 order, we denied summary determination as to Williams, but reserved ruling on the motion as to Skyline Realty. By order dated December 11, 2008, we granted the motion as to Skyline Realty finding cause to discipline under § 339.100.2(2), (4), and (15).<sup>3</sup> We incorporate that order into this final decision.

On March 13, 2009, and October 21, 2009, we held a hearing to take evidence on whether there is cause to discipline Williams. Assistant Attorney General Margaret K. Landwehr represented the MREC. Williams represented himself.

#### **Findings of Fact**

1. Williams was licensed in Missouri as a broker-officer, and his licenses were current and active at all relevant times. Skyline Realty's real estate corporation license was at all relevant times current and active. Both licenses expired on June 30, 2008.
2. At all relevant times, Williams acted in the capacity of broker-officer for Skyline Realty.
3. Gregory Crusoe was employed as an officer of Skyline Realty.
4. At the time of Crusoe's employment with Skyline Realty, Crusoe did not hold a Missouri real estate license.

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<sup>3</sup>Subdivision (15) was renumbered (16) as this decision reflects.

5. Williams and Skyline Realty served as Crusoe's agent in the purchase of the following properties: 5008 Walrand, Kansas City, Missouri ("5008 Walrand"); 4012 Norton, Kansas City, Missouri ("4012 Norton"); 800 Elmwood, Kansas City, Missouri ("800 Elmwood"); and 3530 East Sixth Street, Kansas City, Missouri ("3530 Sixth Street").

6. Fred McGary served as the listing real estate agent for the subject properties. McGary listed the subject properties with real estate broker John Bills.

7. Crusoe was paid by Williams and Skyline Realty as compensation for being an officer and for fixing up properties and getting them ready for rental. He used the money as the down payments on the properties.

8. In a residential real estate transaction, commissions are usually a percent of the purchase price and are often split between a buyer's agent and a settler's agent. The commission amount is negotiable and typically ranges from 1% to 10%. A flat fee commission is typical on lower priced properties, and is usually around 10% of the purchase price or a set minimum.

#### 4012 Norton

9. On or about May 21, 2004, the property located at 4012 Norton was originally listed for \$27,500. The original commission was 7% with a \$2,000 minimum.

10. Williams provided Crusoe with a loan application for the purchase of the property located at 4012 Norton.

11. Williams obtained the loan on behalf of Crusoe through Novastar Mortgage, Inc., 8140 Ward Parkway, Kansas City, Missouri.

12. On or about November 12, 2004, Crusoe used the loan to purchase the property located at 4012 Norton for \$60,000.

13. Williams received a commission of approximately 66% of the sale price.

14. Crusoe was subsequently forced to surrender the property located at 4012 Norton through foreclosure proceedings.

5008 Walrand

15. On or about February 18, 2004, the property located at 5008 Walrand was originally listed for \$29,900. The original commission was 7%.

16. Williams provided Crusoe with a loan application so that Crusoe could purchase the property located at 5008 Walrand.

17. Williams obtained the loan on behalf of Crusoe through Novastar Mortgage, Inc.

18. On or about March 17, 2004, Crusoe was able to use the loan to purchase the property located at 5008 Walrand for \$59,900.

19. Williams received a commission of \$28,000, approximately 46% of the sale price. The commission was listed as a flat fee.

20. Williams assisted Crusoe with the property at 5008 Walrand by buying supplies and getting the property ready for rental. Crusoe did most of the work on the property himself.

21. Williams helped find the first tenant for the property. The tenant stayed only four or five months and it was not rented again.

22. Crusoe was subsequently forced to surrender the property located at 5008 Walrand through foreclosure proceedings.

800 Elmwood

23. On or about November 17, 2004, the property located at 800 Elmwood was originally listed for \$27,500. The original commission was 7% with a \$2,000 minimum.

24. Williams provided Crusoe with a loan application so that Crusoe could purchase the property located at 800 Elmwood.

25. Williams obtained the loan on behalf of Crusoe through Novastar Mortgage, Inc.
26. On or about December 28, 2004, Crusoe was able to use the loan to purchase the property located at 800 Elmwood for \$65,000.
27. Williams received a commission of approximately 54% of the purchase price.
28. Williams gave Crusoe some money to fix up the property, but it did not meet the required standards to pass inspection.
29. Crusoe was subsequently forced to surrender the property located at 800 Elmwood through foreclosure proceedings.
30. At the time of sale, the actual value of the property located at 800 Elmwood was \$30,000.

3530 East Sixth Street

31. The property located at 3530 East Sixth Street was originally listed for \$49,900. The original commission was 7%.
32. Williams provided Crusoe with a loan application so that Crusoe could purchase the property located at 3530 East Sixth Street.
33. On or about September 12, 2004, Crusoe was able to use the loan to purchase the property located at 3530 East Sixth Street for \$79,900.
34. Williams received a commission of \$30,000, approximately 37% of the sale price.
35. This property was basically ready for tenant occupancy, and Crusoe had paying tenants for approximately six months.
36. Crusoe was subsequently forced to surrender the property located at 3530 East Sixth Street through foreclosure proceedings.

### All Properties

37. Crusoe signed sales contracts and exclusive buyer's agency's contracts showing the estimated amount of commissions to be paid for all properties. He did not sign under pressure or duress.

38. Crusoe was aware that the sale prices on the properties were adjusted to include commissions.

### Conclusions of Law

We have jurisdiction of the complaint.<sup>4</sup> The MREC has the burden to prove facts for which the law allows discipline.<sup>5</sup> This Commission must judge the credibility of witnesses, and we have the discretion to believe all, part, or none of the testimony of any witness.<sup>6</sup> When there is a direct conflict in the testimony, we must make a choice between the conflicting testimony.<sup>7</sup>

#### I. Objection Taken with Case

Williams objected to the characterization of one witness that he said he was "raising" commissions.<sup>8</sup> We overrule the objection. Williams made his arguments that the commissions were fixed and disclosed.

#### II. Cause for Discipline

The MREC argues that § 339.100.2(2), (4), (15), and (18) authorize discipline against Williams. Subdivisions (15) and (18) were renumbered (16) and (19), respectively, effective August 30, 2004, without substantive changes.<sup>9</sup> We cite the law currently in effect:

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<sup>4</sup>Section 621.045.

<sup>5</sup>*Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

<sup>6</sup>*Harrington v. Smarr*, 844 S.W.2d 16, 19 (Mo. App., W.D. 1992).

<sup>7</sup>*Id.*

<sup>8</sup>Tr. at 170-71.

<sup>9</sup>Laws 2004, H.B. 985, § A (92<sup>nd</sup> Gen. Assembly, 2<sup>nd</sup> Reg. Sess'n). Williams' conduct regarding the sale of 3530 East Sixth Street appears to have spanned August 30, 2004, because the sale of the property occurred on September 12, 2004. Williams' conduct regarding the sale of 800 Elmwood occurred after August 30, 2004.

2. The [MREC] may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621 against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

\* \* \*

(2) Making substantial misrepresentations or false promises or suppression, concealment or omission of material facts in the conduct of his business or pursuing a flagrant and continued course of misrepresentation through agents, salespersons, advertising or otherwise in any transaction;

\* \* \*

(4) Representing to any lender, guaranteeing agency, or any other interested party, either verbally or through the preparation of false documents, an amount in excess of the true and actual sale price of the real estate or terms differing from those actually agreed upon;

\* \* \*

(16) Committing any act which would otherwise be grounds for the [MREC] to refuse to issue a license under section 339.040;

\* \* \*

(19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct or gross negligence[.]

#### A. Duty to Buyer/Commissions

Williams and Skyline Realty were the agents for the buyer in the sales of the subject properties. Section 339.740<sup>10</sup> provides:

1. A licensee representing a buyer or tenant as a buyer's or tenant's agent shall be a limited agent with the following duties and obligations:

(1) To perform the terms of any written agreement made with the client;

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<sup>10</sup>RSMo 2000.

(2) To exercise reasonable skill and care for the client;

(3) To promote the interests of the client with the utmost good faith, loyalty, and fidelity . . . .

\* \* \*

(5) To comply with all requirements of sections 339.710 to 339.860, subsection 2 of section 339.100, and any rules and regulations promulgated pursuant to those sections[.]

There are no laws governing the amount of commissions that are considered acceptable. The MREC has not set a maximum percentage as have been set in other professions – i.e., contingent fee contracts with lawyers.

Williams argues that he breached no duty to Crusoe and that the MREC has set forth no law that sets a particular amount of a real estate commission that is acceptable or unacceptable. The MREC's expert witness, Sirena Beyer, provided testimony that the commissions paid to Williams were greater than the typical 7% to 10% of the sales price.

Beyer also testified that she believed Williams' conduct violated his fiduciary duties to the buyer because, in her opinion, Williams was obligated to get the lowest price for his customer. The foundation of her opinion was predicated on Crusoe not knowing the amount of the commissions. The expert was mistaken on this issue.

On cross-examination, Beyer admitted that there is no limit set by any law, regulation, or ethical standard on the amount of commissions paid, and that she had never told her agents that there was a limit on commissions.

She admitted that Crusoe signed the contracts which contained information as to the price he was paying for the properties and the amount of the commissions. Beyer based much of her criticism on the idea that Crusoe did not know the original listing price of the properties and that the price he was agreeing to pay was higher.

Crusoe testified that he did not understand that he was going to be paying much more for the properties than what was originally listed. But his testimony does not support the MREC's position that he did not know he was buying the properties at a higher price. With regard to the Walrand property, he testified:

Q: And at that time you didn't indicate that you knew what the original list price was?

A: Well, to be honest, I think I remember what the original list price was, but I didn't know that at the end when I signed all the paperwork I didn't know that it was going to be that total amount basically until everything was signed because I think it's been four years ago.

Q: I understand.

A: But I'm thinking I did remember that it was original list price, that's what it was. But you know, when everything closed, it was a lot more than I thought it would be. So I really didn't understand exactly how it worked like that.<sup>[11]</sup>

Crusoe admitted that it was "all in the paperwork."<sup>12</sup>

Crusoe also admitted that he knew the closing price of the East 6<sup>th</sup> Street property was more than the original listing price,<sup>13</sup> but stated that he did not know the original price of the Norton property.<sup>14</sup> On cross-examination, he testified:

Q: I just want to make sure I understand. You definitely were aware that the sales prices were adjusted to include our commission. You're saying that you had some concerns about – you didn't say that you had concerns. You said that you don't recall the actual amount – right now you're saying you don't recall the actual amount of the commissions at the time of signing the contract; is that right?

A: Right, right.<sup>[15]</sup>

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<sup>11</sup>Tr. at 97-98.

<sup>12</sup>Tr. at 98.

<sup>13</sup>Tr. at 110.

<sup>14</sup>Tr. at 115.

<sup>15</sup>Tr. at 141.



We find that the MREC failed in its burden of showing that there was less than full disclosure between Williams and Crusoe or that anything else in the transactions between them was a violation of any fiduciary duty.

B. Misrepresentation/False Documents – Subdivisions (2) and (4)

A misrepresentation is a falsehood or untruth made with the intent of deceit rather than inadvertent mistake.<sup>16</sup> “Substantial” means “being that specified to a large degree or in the main . . . <a [substantial] lie>.”<sup>17</sup>

The MREC argued that Williams engaged in a scheme by which he and Skyline Realty received artificially high commissions through inflation of the listing prices and then obtaining financing through false appraisal reports. But the evidence adduced showed that while the commissions were high, there was no prohibition against them. Crusoe knew that the final sale price was higher than that at which the properties had previously been listed. The MREC failed to link Williams to any improprieties in appraisal reports to inflate the listing prices. The MREC failed in its burden of proving that Williams’ conduct constituted substantial misrepresentations and false promises, and suppression, concealment or omission of material facts in the conduct of Williams’ business.

The MREC failed to link Williams to any false appraisal reports or prove that he *provided false information to anyone*. Although the MREC attempted to show that Williams paid Crusoe for the express purpose of purchasing the property and that this should have been disclosed on the contracts, Williams presented evidence that the money paid to Crusoe was compensation for his services as an officer and for work on unrelated properties before the transactions at issue here. Crusoe’s testimony was confusing, in that he testified at one point that

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<sup>16</sup>*Hernandez v. State Bd. of Regis’n for Healing Arts*, 936 S.W.2d 894, 899 n.3 (Mo. App., W.D. 1997).

<sup>17</sup>WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 2280 (unabr. 1986).

he would not have purchased the property without the money, but also testified that the money was discussed with him and paid as compensation for his services. We return to the burden of proof, and determine that the MREC failed to meet this burden.

There is no cause for discipline under § 339.100.2(2) or (4).

C. Grounds for Refusal – Subdivision (16)

Section 339.040 provides the qualifications for licensure:

1. Licenses shall be granted only to persons who present, and corporations, associations, partnerships, limited partnerships, limited liability companies, and professional corporations whose officers, managers, associates, general partners, or members who actively participate in such entity's brokerage, broker-salesperson, or salesperson business present, satisfactory proof to the commission that they:

(1) Are persons of good moral character; and

(2) Bear a good reputation for honesty, integrity, and fair dealing;  
and

(3) Are competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public.

There is no evidence of what Williams' reputation is. Therefore, there is no showing that his reputations would be grounds to refuse issuance of a license under § 339.040.1(2).

Good moral character is honesty, fairness, and respect for the law and the rights of others.<sup>18</sup> Incompetence is a general lack of professional ability, or a lack of disposition to use an otherwise sufficient professional ability, to perform in an occupation.<sup>19</sup> For the reasons stated above, the MREC failed to prove that Williams lacks good moral character or is not competent to transact business to safeguard the interests of the public. There is no cause for discipline under § 339.100.2(15).

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<sup>18</sup>*Hernandez*, 936 S.W.2d at 899 n.1.

<sup>19</sup>*Tendai v. Missouri Bd. of Regis'n for Healing Arts*, 161 S.W.3d 358, 369 (Mo. banc 2005).

D. Other Conduct – Subdivision (19)

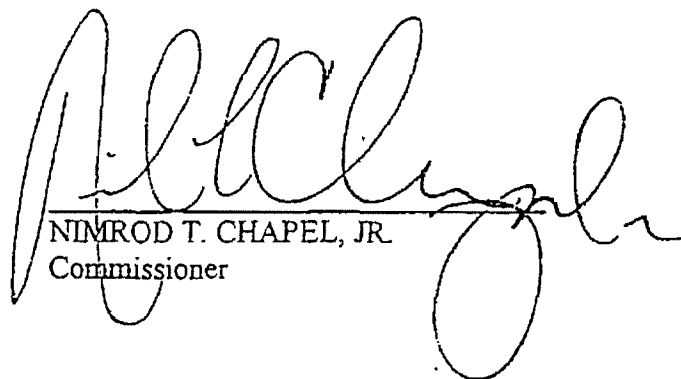
The definition of “trustworthy” is “worthy of confidence” or “dependable.”<sup>20</sup> Improper means “not in accord with fact, truth, or right procedure[.]”<sup>21</sup> Fraud is an intentional perversion of truth to induce another, in reliance on it, to part with some valuable thing belonging to him.<sup>22</sup> We have found no conduct of Williams that is untrustworthy, improper or fraudulent.

We find no cause for discipline under § 339.100.2(19).

**Summary**

Williams is not subject to discipline under § 339.100.2(2), (4), (16) or (19). Skyline Realty is subject to discipline under § 339.100.2(2), (4), and (16).

SO ORDERED on August 22, 2011.



NIMROD T. CHAPEL, JR.  
Commissioner

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<sup>20</sup>MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 1344 (11<sup>th</sup> ed. 2004).

<sup>21</sup>*Id.* at 626.

<sup>22</sup>*State ex rel. Williams v. Purl*, 128 S.W. 196, 201 (Mo. 1910).